

AMENDED IN SENATE JANUARY 5, 2012

AMENDED IN SENATE JANUARY 4, 2012

**SENATE BILL**

**No. 778**

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**Introduced by Senator Padilla**

February 18, 2011

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~~An act to add Section 25600.1 to the Business and Professions Code, relating to alcoholic beverages.~~ *An act to add Section 25600.1 to the Business and Professions Code, relating to alcoholic beverages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 778, as amended, Padilla. Alcoholic beverages licensees: contests and sweepstakes.

*The Alcoholic Beverage Control Act prohibits any licensee from giving any premium, gift, or free goods in connection with the sale or distribution of any alcoholic beverage, except as provided.*

*This bill would permit an authorized licensee, as defined, to conduct, sponsor, or participate in a consumer contest or sweepstakes, as defined, offering the chance to win prizes, if specified conditions are met.*

*The Alcoholic Beverage Control Act provides that a violation of any of its provisions for which another penalty or punishment is not specifically provided is a misdemeanor. This bill would expand existing crimes by imposing additional duties on a licensee under the act, thus, the bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 25600.1 is added to the Business and*
- 2     *Professions Code, to read:*
- 3     *25600.1. (a) Notwithstanding any other provision of law, an*
- 4     *authorized licensee may conduct, sponsor, or participate in*
- 5     *consumer contests and sweepstakes, subject to the following*
- 6     *conditions:*
- 7         *(1) A purchase or entry fee shall not be required to enter a*
- 8         *contest or sweepstakes. Entry or extra chances in a contest or*
- 9         *sweepstakes shall not be made available via the purchase of an*
- 10        *alcoholic beverage. Entrance into a contest or sweepstakes shall*
- 11        *be limited to persons 21 years of age or older.*
- 12        *(2) (A) Caps, cap liners, corks, labels, cartons, cases, or other*
- 13        *material attached to an alcoholic beverage when purchased shall*
- 14        *not be used as an entry to a contest or sweepstakes or as a means*
- 15        *of determining the amount or size of the prize or the winner in a*
- 16        *contest or sweepstakes.*
- 17        *(B) Neck hangers may carry an entry form only if similar entry*
- 18        *forms are available at the point of sale and are reproduced or an*
- 19        *alternative means of entry is available.*

1     (3) *Scratch-offs, pull tabs, or other means of instant wins in a*  
2 *contest or sweepstakes shall be not permitted.*

3     (4) *A visit to a retail premises shall not be required to enter a*  
4 *contest or sweepstakes.*

5     (5) *Alcoholic beverages or anything redeemable for alcoholic*  
6 *beverages shall not be awarded as a contest or sweepstakes prize.*  
7 *This paragraph shall not prohibit a contest or sweepstakes in*  
8 *which the prize is cash or the awarding of cash in lieu of a prize*  
9 *that is tangible personal property or real property.*

10    (6) *A retail licensee shall not serve as the agent of an authorized*  
11 *licensee by collecting or forwarding entries or awarding prizes to*  
12 *a contest or sweepstakes winner. The matching of entries with*  
13 *numbers or pictures on the point-of-sale materials at retail licensed*  
14 *premises is permitted only if entrants are also offered the*  
15 *opportunity to use an alternative means to determine prize-winning*  
16 *status.*

17    (7) *A licensee that is not an authorized licensee shall not share*  
18 *in, or contribute to, the costs of a contest or sweepstakes authorized*  
19 *by this section. A licensee that is not an authorized licensee shall*  
20 *not serve as the agent of an authorized licensee to collect or*  
21 *forward entries or to furnish any prize to any contest or*  
22 *sweepstakes winner.*

23    (8) (A) *Advertising of a contest or sweepstakes shall comply*  
24 *with the signage and advertising restrictions contained in this*  
25 *chapter, Chapter 15 (commencing with Section 25500), and any*  
26 *regulations issued by the department.*

27    (B) *Advertising or promotion of a contest or sweepstakes shall*  
28 *not identify or refer to any retail licensee.*

29    (C) *A retail licensee shall only advertise or promote a contest*  
30 *or sweepstakes authorized by this section in the manner specified*  
31 *in subparagraph (A).*

32    (D) *Advertising or promotion of a contest or sweepstakes shall*  
33 *only be conducted on the premises of a retail licensee when such*  
34 *advertisement or promotion involves a minimum of two unaffiliated*  
35 *retail licensees. For purposes of this subparagraph, “unaffiliated*  
36 *retail licensees” shall not include any retail licensee owned in*  
37 *whole or in part by an authorized licensee or any officer, director,*  
38 *or agent of that licensee.*

1     (E) Placement of signs or other advertising of a contest or  
2     sweepstakes in a licensed retail premises shall not be conditioned  
3     upon the following:

4     (i) Product placement within the licensed premises.

5     (ii) The sale of any product produced by an authorized licensee.

6     (9) Contest or sweepstakes prizes shall not be awarded to any  
7     retail or wholesale licensee or agent, officer, or family member of  
8     any retail or wholesale licensee. An authorized licensee shall  
9     maintain all records pertaining to a contest or sweepstakes for  
10    three years following the completion of a contest or sweepstakes.

11    (b) For purposes of this section:

12    (1) “Authorized licensee” means a winegrower, beer and wine  
13    importer general, beer manufacturer, out-of-state beer  
14    manufacturer certificate holder, distilled spirits manufacturer,  
15    distilled spirits manufacturer’s agent, distilled spirits importer  
16    general, distilled spirits rectifier, distilled spirits general rectifier,  
17    rectifier, out-of-state distilled spirits shipper’s certificate holder,  
18    brandy manufacturer, and brandy importer. An authorized licensee  
19    may hold more than one license issued pursuant to this division.

20    (2) “Contest” means a game, contest, puzzle, scheme, plan, or  
21    similar activity that holds out or offers to participants the  
22    opportunity to receive or compete for gifts, prizes, gratuities, or  
23    other things of value as determined by skill, knowledge, or ability  
24    rather than upon random selection. Skill, knowledge, or ability  
25    does not include the consumption or use of alcoholic beverages.

26    (3) “Sweepstakes” means a procedure, activity, or event for the  
27    distribution of anything of value by lot, chance, or random selection  
28    where the odds for winning a prize are equal for each entry.

29    (c) A prize awarded for a contest or sweepstakes conducted  
30    pursuant to this section shall not be subject to the monetary  
31    limitations imposed by Section 25600 or a regulation issued by  
32    the department.

33    (d) Nothing in this section authorizes marketing schemes where  
34    consumers are entitled to an allotment of points based on purchases  
35    made over a period of time that can be redeemed for prizes, things  
36    of value, or additional contest or sweepstakes entries.

37    (e) An authorized licensee that violates this section, in addition  
38    to any other penalty imposed by this division, may be prohibited  
39    by the department from offering a contest or sweepstakes to  
40    California residents for a period of 12 months.

1     *SEC. 2. No reimbursement is required by this act pursuant to*  
2     *Section 6 of Article XIII B of the California Constitution because*  
3     *the only costs that may be incurred by a local agency or school*  
4     *district will be incurred because this act creates a new crime or*  
5     *infraction, eliminates a crime or infraction, or changes the penalty*  
6     *for a crime or infraction, within the meaning of Section 17556 of*  
7     *the Government Code, or changes the definition of a crime within*  
8     *the meaning of Section 6 of Article XIII B of the California*  
9     *Constitution.*

10    ~~SECTION 1. Section 25600.1 is added to the Business and~~  
11    ~~Professions Code, to read:~~

12    ~~25600.1. (a) Notwithstanding any other provision of law, an~~  
13    ~~authorized licensee may conduct, sponsor, or participate in contests~~  
14    ~~and sweepstakes, subject to the following conditions:~~

15    ~~(1) A purchase or entry fee shall not be required to enter a~~  
16    ~~contest or sweepstakes. Entry or extra chances in a contest or~~  
17    ~~sweepstakes shall not be made available via the purchase of an~~  
18    ~~alcoholic beverage. Entrance into a contest or sweepstakes shall~~  
19    ~~be limited to persons 21 years of age or older.~~

20    ~~(2) (A) Caps, cap liners, corks, labels, cartons, cases, or other~~  
21    ~~material attached to an alcoholic beverage when purchased shall~~  
22    ~~not be used as an entry to a contest or sweepstakes or as a means~~  
23    ~~of determining the amount or size of the prize or the winner in a~~  
24    ~~contest or sweepstakes.~~

25    ~~(B) Neck hangers may carry an entry form only if similar entry~~  
26    ~~forms are available at the point of sale and are reproduced or an~~  
27    ~~alternative means of entry is available.~~

28    ~~(3) Scratch-offs, pull tabs, or other means of instant wins in a~~  
29    ~~contest or sweepstakes shall be not permitted.~~

30    ~~(4) A visit to a retail premises shall not be required to enter a~~  
31    ~~contest or sweepstakes.~~

32    ~~(5) Alcoholic beverages or anything redeemable for alcoholic~~  
33    ~~beverages shall not be awarded as a contest or sweepstakes prize.~~  
34    ~~This paragraph shall not prohibit a contest or sweepstakes where~~  
35    ~~the prize is cash or the awarding of cash in lieu of a prize that is~~  
36    ~~tangible personal property or real property.~~

37    ~~(6) A retail licensee shall not serve as the agent of an authorized~~  
38    ~~licensee by collecting or forwarding entries or awarding prizes to~~  
39    ~~a contest or sweepstakes winner. A retail licensee may match~~  
40    ~~entries with numbers or pictures at the point-of-sale on the licensed~~

1 ~~premises only if entrants are also offered the opportunity to use~~  
2 ~~an alternative means to determine prize-winning status.~~

3 ~~(7) A retail licensee, beer and wine wholesaler, or distilled spirits~~  
4 ~~wholesaler shall not share in, or contribute to, the costs of a contest~~  
5 ~~or sweepstakes authorized by this section.~~

6 ~~(8) (A) Advertising of a contest or sweepstakes at an on-sale~~  
7 ~~retail license location or an off-sale retail license location shall~~  
8 ~~comply with Section 25611.1 or Section 25503.1, respectively.~~

9 ~~(B) Advertising or promotion of a contest or sweepstakes shall~~  
10 ~~not identify or refer to any retail licensee.~~

11 ~~(C) Advertising or promotion of a contest or sweepstakes shall~~  
12 ~~not be conducted exclusively in, by, or through any retail licensee~~  
13 ~~or chain of retail licensees.~~

14 ~~(D) Placement of signs or other advertising of a contest or~~  
15 ~~sweepstakes in a licensed retail premises shall not be conditioned~~  
16 ~~upon product placement with the licensed premises.~~

17 ~~(9) Contest or sweepstakes prizes shall not be awarded to any~~  
18 ~~retail or wholesale licensee or agent, officer, or family member of~~  
19 ~~any retail or wholesale licensee. This subdivision shall not apply~~  
20 ~~to a contest or sweepstakes conducted by an authorized licensee~~  
21 ~~and wholesaler as part of an incentive program.~~

22 ~~(b) For purposes of this section:~~

23 ~~(1) "Authorized licensee" means a winegrower who may or~~  
24 ~~may not hold another license or licenses under this division.~~

25 ~~(2) "Contest" means a game, contest, puzzle, scheme, plan, or~~  
26 ~~similar activity that holds out or offers to participants the~~  
27 ~~opportunity to receive or compete for gifts, prizes, gratuities, or~~  
28 ~~other things of value as determined by skill, knowledge, or ability~~  
29 ~~rather than upon random selection.~~

30 ~~(3) "Sweepstakes" means a procedure, activity, or event for the~~  
31 ~~distribution of anything of value by lot, chance, or random selection~~  
32 ~~where the odds for winning a prize are equal for each entry.~~

33 ~~(e) Nothing in this section authorizes marketing schemes where~~  
34 ~~consumers are entitled to an allotment of points based on purchases~~  
35 ~~made over a period of time that can be redeemed for prizes, things~~  
36 ~~of value, or additional contest or sweepstakes entries.~~

37 ~~(d) An authorized licensee that violates this section, in addition~~  
38 ~~to any other penalty imposed by this division, may be prohibited~~  
39 ~~by the department from conducting, sponsoring, or participating~~

1 in a contest or sweepstakes for California residents for a period of  
2 12 months.

3 ~~SEC. 2. No reimbursement is required by this act pursuant to~~  
4 ~~Section 6 of Article XIII B of the California Constitution because~~  
5 ~~the only costs that may be incurred by a local agency or school~~  
6 ~~district will be incurred because this act creates a new crime or~~  
7 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
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9 ~~the Government Code, or changes the definition of a crime within~~  
10 ~~the meaning of Section 6 of Article XIII B of the California~~  
11 ~~Constitution.~~